IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SECOND DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

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WRIT PETITION NO : 23015 of 1994

Between:

Akula Kistappa, S/o. Adeppa,
resident of Maruvapalli, H/o. Ramapuram,

Penukonda Mandal, Anantapur District. **..... PETITIONER**

AND

1.The Revenue Divisional Officer,

Penukonda, Anantapur Dist.
2.The Mandal Revenue Officer,

Penukonda Mandal, Anantapur Dist. **.....RESPONDENTS**

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of Mandamus or any other appropriate writ or direction declaring the orders of the 1st respondent passed in D.Dis. 2889/94/B dated 30.08.1994 confirming the orders of the 2nd respondent passed under Section 6 of Land Encroachment Act dated 12.06.1994 as illegal, arbitrary and pass such other order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner: MR.O.MANOHER REDDY

Counsel for the Respondents: GP FOR REVENUE

The Court made the following :

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ORDER:

Heard learned Counsel for the parties.

The writ petitioner challenged the order of the appellate authority under Land Encroachment Act. It appears that an order of eviction was passed against the petitioner who filed an appeal. Appeal was dismissed by the Revenue Divisional Officer, Penukonda, on the ground that the land in dispute was classified as Kalva poramboke. The learned Counsel for the writ petitioner submits that the appeal was dismissed *in limini* without notice to the other side.

Learned Counsel for the respondents, however, submits that there is nothing wrong in appeal being dismissed because admittedly, the land belongs to the Government. Even in the writ petition, the writ petitioner has nowhere stated that he has title over the land. The only ground he has stated in the affidavit is that since his land is adjacent to the land encroached and he had taken possession of this land forty years before, therefore, he should not be evicted. On his own admission, the petitioner is an encroacher, therefore, no fault can be attributed to the order passed by the Revenue Divisional Officer in appeal. Learned Counsel for the respondents, however, relied on the judgment of the Supreme Court in ***'Govt. of Andhra Pradesh Vs. Thummala Krishna Rao and another.*** This judgment only lays down that, "Where there is a bonafide dispute with regard to the title of the property between the Government and the occupant, the remedy would not be in the Land Encroachment Act, but the title would have to be established by the parties before an appropriate Civil Court". Since, there is no dispute with regard to the title of the property, raised by the petitioner and he has admitted that the property belongs to the State, therefore, I do not find any illegality in the order passed by the authorities below.

Hence, the Writ Petition is dismissed. No costs.

2nd September, 2004

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Copy to:

1.The Revenue Divisional Officer,

Penukonda, Anantapur Dist.
2.The Mandal Revenue Officer,

Penukonda Mandal, Anantapur Dist.

3.Two CCs to the G.P. for Revenue,

High Court Buildings, High Court of A.P.,

Hyderabad (O.U.T.)

4. Two CD copies.